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JAMES D. MAHER
Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1920.

No. 397.

WILLIAM HOLLIS ET AL., *Appellants,*

v.

CHARLES W. KUTZ ET AL., *Appellees.*

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MOTION TO ADVANCE.

ROSCOE F. WALTER,
Attorney for Appellants.

Press of Byron S. Adams, Washington, D. C.

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Come now the appellants in the above-entitled cause, and respectfully move the advancement of said cause for early hearing during the October, 1920, term of this court.

The questions presented in said case, in addition to certain constitutional matters, involve various paragraphs of Section 8 of "An Act making appropriations to provide for the expenses of the government of the

District of Columbia for the year ending June 30, 1914, and for other purposes," approved March 4, 1913, (37 Stat. L. 974), known as the Public Utilities Act of The District of Columbia.

One of the principal issues raised is that wherein appellants challenge the power of the Public Utilities Commission to fix rates for gas furnished private consumers in the District of Columbia by the appellee, the Washington Gas Light Company, without regard to the prices paid to said Company for gas used by the United States and District Governments and others in the District not "private consumers" within the meaning of that term as used in the orders of said Utilities Commission made the basis of appellants' bill in equity herein involved.

Appellants insist that the provisions of the Utilities Act giving the Commission the power to regulate and fix reasonable and non-discriminatory rates to be charged by the various utilities in the District for their products, services, etc., do not authorize it to increase or modify rates to private consumers or individuals receiving such products, services, etc., and at the same time not regulate and fix corresponding rates and charges for similar products and services furnished to others not private consumers or receivers of such products or services. In other words, the Act requires that price regulation shall extend to all consumers of gas in the District of Columbia.

As alleged in the bill, the two orders complained of were made pursuant to applications of the Gas Company for increased rates, the basis of the petitions being that the increases sought were necessary if the company were to receive a reasonable return on its investment.

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These orders were promulgated on March 15, 1918, and March 15, 1919, respectively, and prescribed increased rates on gas furnished to private consumers only, to wit: from the statutory rate of 75 cents per 1,000 cubic feet, to 90 cents, and therefrom to 95 cents per 1,000 cubic feet, the rate to the governments for gas used in public buildings being permitted to remain at the statutory rate of 70 cents, and that for gas used by the governments for certain other purposes and for that furnished to other companies not private consumers being permitted to remain at an average of about 52 cents per 1,000 cubic feet, and when it appeared at the hearings on the applications for the higher rates that the cost of producing gas at the burners was in excess of the government rate of 70 cents.

Owing to the increased cost of everything essential to the manufacture and delivery of gas to the user since the promulgation of the orders complained of in appellants' bill, additional applications at various times have been made to the Commission by the appellee gas company, resulting in further advances in the rates to private consumers until at the present time the rate is in excess of $1.30 per 1,000 cubic feet, with a graduated scale of somewhat lower rates to wholesale private consumers. During all this time the government rate and that to companies not private consumers have been permitted to remain at that, or practically that, stated in the last preceding paragraph.

The result, therefore, is that appellants and all other private consumers of gas in the District of Columbia have been and now are being forced to pay by reason of said orders, unreasonable, unjustly discriminatory, and confiscatory rates for gas used by them, and there-

by forced to contribute material amounts of money toward the payment of the gas bills of the General and District Governments and of certain companies not private consumers, a burden from which, it is respectfully submitted, appellants and all other private consumers in the District should be immediately relieved as well as reimbursed for moneys which they have paid in excess of the legal rate.

Another question of importance, and arising out of the Utilities Act, is that made the basis of affirmance by the Court of Appeals of the dismissal of appellants' bill. The action of the trial court was based on its conclusion that the complaint did not state a cause of action and that plaintiffs' right of action was barred by the statute of limitations contained in paragraph 65 of the Utilities Act. The latter court overruled the motion to dismiss the bill on the ground contended for by defendants (appellees here), namely: that plaintiffs were not properly before the court and not "parties interested" within the meaning of paragraph 64 of the Act. The Court of Appeals, however, disagreed with this conclusion of the trial court and based its affirmance of dismissal solely on that ground, holding that plaintiffs' bill was in the nature of an appeal, that they first should have made complaint to the Utilities Commission; and that until they did so, they could not become "parties interested" within the meaning of the Act, such as to entitle them to institute a proceeding in equity in the Supreme Court of the District.

The decision of the trial court that plaintiffs' right of action is barred by paragraph 65 of the Utilities Act also presents a question of importance which should be decided at the earliest convenient date. This limita-

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tion prescribes a period of 120 days after the rendition of an order of the Commission within which an application to the Supreme Court of the District to set aside such order, shall be made. Appellants contend that this provision does not relate to an action such as the one here involved for the reason that the alleged illegality of the orders complained of is based on a disregard by the Commission of appellants' rights arising under the constitution and under paragraph 93 of the Utilities Act itself, which declares that—

> This Section shall not have the effect to release or waive any right of action * * * by any person for any right which may have arisen or which may hereafter arise under any law of the United States or any regulation in force in the District of Columbia.

Aside from this, should the statute of limitations be held to apply to the order of March 15, 1918, (the order of March 15, 1919, not being affected because attacked by plaintiffs' bill within the 120 days) the limitation would be void because it would affect a denial of a constitutional right, namely, that of appeal to the courts for relief and protection against unconstitutional orders and rates illegal in and of themselves.

Another question of importance is that which arises by reason of the alleged failure of the Commission to give proper and reasonable notice to certain parties interested, of the time of an adjourned hearing on the 2nd application of the appellee gas company for increased rates resulting in the order of March 15, 1919, made a basis of appellants' bill, in violation of paragraph 94 of the Utilities Act.

It is therefore respectfully submitted that the case presents questions of public importance and should be decided at the earliest moment convenient to this honorable court.

Congress has recognized the importance of an early determination of questions arising under the Utilities Act by its having provided in the 3rd paragraph of paragraph 64 of the Act as follows:

> All such proceedings (as that here involved) shall have precedence over any civil cause of a different nature pending in such court, and the Supreme Court of the District of Columbia shall always be deemed open for the trial thereof, and the same shall be tried and determined as are equity proceedings in said court.

It is therefore submitted that this motion should be allowed, and the suggestion is respectfully made, in case it is allowed, that January 15th, next, be the date fixed upon which the case may be heard.

Copies of the motion have been served on counsel for the appellees.

Respectfully,

ROSCOE F. WALTER,

Attorney for Appellants.